

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NELSON RYDER

Plaintiff

v.

ANTHONY LUSCAVAGE, et al.,

Defendants

3:13-CV-1498
(JUDGE MARIANI)

FILED
SCRANTON

JAN 23 2014

PER

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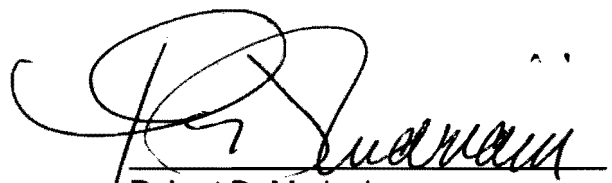
ORDER

AND NOW, THIS 23RD DAY OF JANUARY 2014, upon *de novo* review of Magistrate Judge Mehalchick's Report & Recommendation (Doc. 39), and upon consideration of Plaintiff's Objections thereto (Doc. 42) and Memorandum of Law (Doc. 46), Plaintiff's Motion for Preliminary Injunction (Doc. 3), Brief in Support (Doc. 6), and Declaration in Support (Doc. 2), **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Objections (Doc. 42) are **OVERRULED**.
2. The Report & Recommendation (Doc. 39) is **ADOPTED** to the extent that given the Court's related Order (Doc. 47) granting Plaintiff's Motion to Amend (Doc. 43), Defendants have not yet been served with a copy of Plaintiff's Third Amended Complaint, they have not waived service, and no counsel have enter appearances on Defendants' behalf, thus preventing this Court from making a determination on the merits of Plaintiff's Motion for Preliminary Injunction (Doc. 3).

3. Plaintiff's Motion for Preliminary Injunction (Doc. 3) is **DENIED WITHOUT PREJUDICE.**

- a. The Court recognizes Plaintiff's arguments that he did file a Brief in Support (Doc. 6) and Declaration (Doc. 2) in conjunction with his Motion for Preliminary Injunction (Doc. 3), so failure to file supporting briefs and evidence should not be a basis for denying his motion. Nevertheless, a "court may issue a preliminary injunction only on notice to the adverse party." FED. R. CIV. P. 65(a)(1). Furthermore, to determine whether Plaintiff is entitled to injunctive relief, the Court must hold a hearing on Plaintiff's motion, which the Court cannot do without Defendants' participation. *Id.* at 65(a)(2). Finally, the Third Amended Complaint first must be screened by Judge Mehalchick under 28 U.S.C. 1915A(a) before she can hold a hearing on Plaintiff's motion.
 - b. Should Plaintiff's Third Amended Complaint survive the screening stage, Plaintiff may renew his Motion for Preliminary Injunction by re-filing his motion, brief in support, and declaration (Docs. 2, 3, 6).
4. The case is remanded to Judge Mehalchick for further pre-trial proceedings.



Robert D. Mariani
United States District Judge